

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4292 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

INDUMATI NILKANTH RAGE

Versus

STATE OF GUJARAT

Appearance:

MRS SIDDHI D TALATI for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/01/97

ORAL JUDGMENT

Shri Mukesh Patel, A.G.P., is present but he made a statement that he is not having papers of the case nor any instructions to appear on behalf of the respondent-State. The computer shows that the notice of respondent No.2 has not been received back. However, the respondent No.2 is none other but officer of the State of Gujarat in the Labour and Employment Department. The State of Gujarat has already been served and as such,

service of notice on respondent No.2 is not necessary.

Heard learned counsel for the petitioner.

2. The petitioner unfortunately became widow at the age of 27 years and in such adverse condition she was in need of employment. She prosecuted her studies and completed her graduation. Thereafter she joined the Tata Institute of Social Science and completed diploma in Social Science and Administration which is being treated as equivalent to a decree of Master of Social Work. The petitioner served for some time as a Labour Welfare Officer in private enterprises. The petitioner has been appointed on the post of Lady Inspector of Factories after having been selected by G.P.S.C. on 9.11.64. The post of Lady Inspector of Factories is an isolated post. There was no channel of promotion provided for the post of Lady Inspector of Factories and as such, under the Resolution dated 5.12.81 the pay scale of the post of Lady Inspector of Factories on which the petitioner was working was upgraded from Rs. 700-1300 to Rs.700-1500. However, this Resolution was not given effect to and the petitioner has retired on 31.3.84. The challenge has been made by the petitioner in this Special Civil Application to the Resolution of the Government dated 23rd March 1984, under which the earlier Resolution dated 5th December 1981 has been withdrawn from retrospective effect.

3. Reply to this Special Civil Application has been filed by the respondents and they have come up with the case that the Resolution dated 5.12.81 was never implemented and as such, the petitioner has no right to receive any benefit arising from the said Resolution. However this fact has not been disputed by the respondents in the reply that the post of Lady Factory Inspector was an isolated post and no channel of promotion whatsoever has been provided from the said post. It is also not in dispute that the petitioner was not given any promotion whatsoever during her service tenure and she was retired from the very post on which she was appointed. The respondents have given out explanation that the petitioner cannot claim any benefit of the aforesaid Circular/Resolution as she has been given extension of service for six months. What the respondents contended was that in fact the Resolution dated 5.12.81 was cancelled to give benefit to the petitioner. Otherwise she could not have been given further extension on the post of Lady Inspector of Factories.

4. I do not find any justification in the stand

taken by the respondents. The earlier Resolution dated 5.12.81 has been passed as the petitioner was holding an isolated post. To remove stagnation, the aforesaid Resolution would have been passed but merely because it was not given effect to, I fail to see how it is justified for the respondents to cancel the same. The respondents have given out in the reply that the petitioner has no right of promotion or appointment etc., but there is a fallacy in this contention of the respondents. An employee should have atleast two promotional opportunities during his career of his service. Stagnation in service causes frustration and disappointment amongst the employees which may not be in the larger interest of public service. Providing of promotional avenue gives encouragement to the employees as well as efficiency. In the present case, as stated earlier, no avenue of promotion is provided from the post of Lady Inspector of Factories and the unfortunate part of the case is that the poor lady has been retired from the very post on which she has been appointed. The petitioner was highly qualified as she has also acquired the decree of LL.B. and LL.M. after joining the services. Though these qualifications may not be material or have any relevance in the matter, but unfortunately the action of the respondents not to provide any avenue of promotion to the petitioner or to provide the higher pay scale on the post, is highly arbitrary and unjustified. Another reason given by the respondents to justify their action to withdraw the Resolution dated 5.12.81 that otherwise the petitioner could not have got the extension in service, is wholly unjustified and perverse. To give extension in the employment is the sole discretion of the authority. I fail to see any reason in defence of the respondents that in case the Resolution dated 5.12.81 would not have been withdrawn, the petitioner could not have been given extension. No reason whatsoever has been given in support of this plea by the respondents. In the presence of admission that the Resolution dated 5.12.81 was not given effect to for all the years to come, this defence taken is wholly illusory and a defence manufactured for the sake of defence. Moreover, the petitioner was not given any opportunity of hearing before cancellation of the Circular impugned in this Special Civil Application.

5. In the result, this Special Civil Application succeeds and the same is allowed. The Circular dated 23rd May 1983 is declared to be illegal and arbitrary, and the same is quashed and set aside. The respondents are directed to consider the case of the petitioner for giving her all consequential benefits following therefrom

the quashing of the said Circular, within a period of four months from the date of receipt of certified copy of this order. Rule is made absolute in aforesaid terms. The respondents are directed to pay to the petitioner, Rs.2,000/- by way of costs of this petition. The learned counsel for the petitioner has no objection in case this amount of costs is ordered to be deposited in the account of Advocates' Welfare Fund maintained by the Bar Council of Gujarat. Order accordingly. The respondent No.1 is directed to deposit Rs.2,000/- in the office of the Bar Council of Gujarat at Ahmedabad in the account of Advocates' Welfare Fund within a period of two months from the date of receipt of certified copy of this order. The respondent No.1 shall produce the receipt of payment of this amount on record of this case. A copy of this order may be sent to the Secretary, Bar Council of Gujarat, Ahmedabad. It shall be open for the Secretary, Bar Council of Gujarat, to take appropriate action in the matter in case the amount of costs is not deposited, as ordered by the respondent No.1 with it.

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